

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CASE NO. 8:03CR163
)
 Plaintiff,)
)
 vs.) MEMORANDUM
) AND ORDER
)
 JORGE ARONJA-INDA,)
)
 Defendant.)

This matter is before the Court on the Defendant's Motion Under 18 U.S.C. § 3582 (c)(2) for Modification of Sentence by a Person in Federal Custody (Filing No. 233). The motion references the Supreme Court decision, *Johnson v. United States*, 135 S. Ct. 2551 (2015), and the Defendant appears to seek a reduction in his sentence based on that decision. Also before the Court is a Motion to Withdraw (Filing No. 236) filed by the Federal Public Defender. In the motion, the Federal Public Defender states he has reviewed the Defendant's case and has determined that there was no prior conviction used to enhance the Defendant's sentence; and therefore *Johnson* is not applicable in his case.

In Aronja-Inda's pending Motion, he asserts that any person who was convicted of unlawful possession of a firearm, or received a sentencing enhancement under the residual clause of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii), can now seek relief pursuant to the *Johnson* decision.

The Court acknowledges that defendants who received sentencing enhancements under the residual clause of the ACCA may be entitled to relief under *Johnson*. A review of the Defendant's Presentence Investigation Report ("PSR") ("Filing No. 83) reveals that Aronja-Inda did not receive any sentencing enhancement under the ACCA, but simply

receive a 2-level enhancement for possession of a firearm. The *Johnson* decision is inapplicable to Aronja-Inda's case.

THEREFORE, IT IS ORDERED:

1. Defendant's Motion Under 18 U.S.C. § 3582(c)(2) for Modification of Sentence by a Person in Federal Custody (Filing No. 233) is denied;
2. The Federal Public Defender's Motion to Withdraw (Filing No. 236) is granted; and
3. The Clerk is directed to mail a copy of this Memorandum and Order to Jorge Aronja-Inda at his last known address.

DATED this 18th day of August, 2016.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge